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APPENDIX A

IN THE SUPREME COURT OF THE
STATE OF OREGON

Court of Appeals
A134332
S058236

TIM TUBRA, an individual,
Plaintiff-Appellant,
Respondent on Review,

v.

JOHN MICHAEL COOKE and RON SWOR, individuals; and THE INTERNATIONAL CHURCH OF THE FOURSQUARE GOSPEL, a California nonprofit corporation,
Defendants-Respondents,
Petitioners on Review.

ORDER DENYING REVIEW

Upon consideration by the court.

The court has considered the petition for review and orders that it be denied.

July 29, 2010
DATE

/s/ W. Michael Gillette
PRESIDING JUSTICE

c: John Kaempf
Shay S. Scott

APPENDIX B

COURT OF APPEALS OF OREGON

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225 P.3d 862

050910015; A134332.

TIM TUBRA, an individual,
Plaintiff-Appellant,

v.

JOHN MICHAEL COOKE and RON SWOR, individuals; and the INTERNATIONAL CHURCH OF THE FOURSQUARE GOSPEL, a California nonprofit corporation,
Defendants-Respondents.

Argued and Submitted on August 8, 2008.
Decided January 27, 2010.

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[863] Before WOLLHEIM, Presiding Judge, and ARMSTRONG, Judge, and RIGGS, Senior Judge.

ARMSTRONG, J.

This case arises from a defamation claim that plaintiff, a former interim pastor, brought against his employer church and two of its officials, and that ultimately resulted in a jury verdict and award of damages in plaintiff's favor. Plaintiff appeals the subsequent post-verdict judgment granting defendants' motion for judgment notwithstanding the verdict (JNOV), in which the trial court concluded that the Free Exercise Clause of the First Amendment to the United States Con-[864]stitution deprived it of jurisdiction to adjudicate the dispute. The issue

on appeal is one of first impression for Oregon appellate courts: whether the First Amendment bars recovery for a plaintiff in a claim of defamation that arose from defendants' statements that plaintiff had misappropriated church funds and was dishonest during his time as pastor. We conclude that, under the circumstances presented here, the First Amendment does not bar plaintiff's claim. Accordingly, we reverse.

When reviewing a grant of a JNOV motion, we review the trial evidence in the light most favorable to the party who prevailed before the jury. *Bennett v. Farmers Ins. Co.*, 332 Or. 138, 147-48, 26 P.3d 785 (2001). In this case, that is plaintiff. We state the facts in accordance with that standard.

Plaintiff had been a pastor for various congregations within the International Church of the Foursquare Gospel (the church) since 1981. As of 2003, he was the associate pastor at the Columbia City Foursquare Church, where defendant Cooke was a senior pastor. Cooke also served as a divisional superintendent, which required him to match prospective pastors with vacancies in congregations within his district.

In September 2003, the Columbia City church was experiencing financial difficulties and, as a result, Cooke laid off plaintiff. Cooke offered plaintiff a position as pastor in Vernonia, which was roughly a one-hour drive from Columbia City. Plaintiff was unenthusiastic about the prospective position in Vernonia and explained to Cooke that he had concerns about the salary, health insurance coverage, and lack of opportunities to supplement his income in such a small town. Moreover, plaintiff told Cooke that taking the position in Vernonia would sidetrack him

from his long-expressed goal of founding a Four-square church in Hillsboro.

Despite plaintiff's misgivings, Cooke and defendant Swor, the district supervisor, continued to discuss the opportunity at Vernonia with plaintiff. They offered him a monthly salary of $1,500, which was the amount that the Vernonia church council indicated that it could afford to pay plaintiff; a subsidy of an additional $1,100 per month for plaintiff's first three months (totaling $3,300) to match the salary that the outgoing pastor had received; and health care coverage for up to six months. Swor and Cooke indicated that the health insurance coverage and salary subsidies were "free gifts" that plaintiff had no obligation to repay; they also indicated to plaintiff, orally, that beyond the six-month promise of health insurance coverage, they "would not leave him uncovered" for health benefits if the Vernonia church could not pick up that expense.

Plaintiff eventually accepted the position, but emphasized to Cooke and Swor that he wished to be considered an interim pastor at Vernonia. Plaintiff stated that Cooke had encouraged him to approach the position on a "rent-to-own" basis and speculated that perhaps plaintiff would change his mind about staying permanently once he arrived there. Plaintiff agreed to keep an "open mind" about the situation but continued to assert to Swor and Cooke that he was taking the position on an "interim" basis.

From his first day at the Vernonia church, plaintiff felt that "some deception was taking place" toward the Vernonia church's council and congregation by Cooke and Swor regarding plaintiff's interim status. For plaintiff's first service, Cooke sent a letter of introduction to be read to the congregation by one

of the Vernonia council members announcing "the appointment of [plaintiff] as the pastor of the Vernonia Foursquare Church." That introduction "shocked" plaintiff and his wife; they had never been introduced to a new congregation with such a letter, and they both believed that the letter misled the congregation into believing that plaintiff was the congregation's permanent pastor.

Plaintiff did not tell the congregation of his intention to remain only temporarily at Vernonia; however, plaintiff immediately called Swor about the letter and, later, met with Cooke to discuss plaintiff's concerns about his status at Vernonia. Soon after that meeting, plaintiff called Swor and told him again that he did not wish to remain at Vernonia on a long-term basis. Swor followed up with a letter stating that plaintiff's [865] health insurance would continue to be covered for up to six months, that Swor would send a check for $3,300 to subsidize plaintiff's first three months of salary, and that those gifts would not be expected to be repaid in any way. The letter further indicated that the understanding between Swor, Cooke, and plaintiff was that plaintiff was not staying on permanently, but that plaintiff would not be referred to as "interim" and communication with the Vernonia council would remain as it was.

In April 2004, plaintiff, with the Vernonia council's knowledge, withdrew $3,000 from the church account. He discussed that transaction with the council, explaining that the money had been earmarked for him as a gift. The council accepted that explanation and issued the check in accordance with its normal procedures, including having two individuals (in this instance, plaintiff and a council member) sign the check. The expenditure was further

documented in expense reports that were sent to the district offices. Plaintiff subsequently deposited that check into a personal checking account and wrote four checks against that amount totaling $1,844.16 to cover health insurance premiums.

In June 2004, plaintiff, Cooke, and Swor informed the Vernonia council that plaintiff was only a temporary pastor, and that they were looking for a new pastor to take over the congregation. On July 11, plaintiff told the congregation that he would be leaving. On August 17, Cooke told plaintiff that he had found a new pastor for the Vernonia church and that plaintiff would be transitioned out over the next 30 days.

On August 31, Cooke met with the Vernonia council to discuss the transition with the new pastor. Part of the transition process required the council or superintendent to review the accounting; the Vernonia council's bookkeeper had done so and, at that meeting, asked Cooke to take a look at the April 2004 transaction for $3,000 and let her know if there was a problem with it. Cooke immediately contacted Swor about that transaction, and, on September 15, Swor met with plaintiff about it, telling him that he was being charged with "misappropriation of church funds" for the $3,000 withdrawal, and asked plaintiff for an explanation of the withdrawal. Plaintiff testified that that was the first he had heard of the allegations, that he was "shocked" by Swor's accusation, and that it had come "out of nowhere," and, as a result, he was unable to respond and ended the meeting. Two days later, Swor's secretary called plaintiff and informed him that he "was done at Vernonia" and "to pack [his] bags and leave," which he did.

On October 19, plaintiff had a phone conversation with Swor about the charges of misappropriation; Swor memorialized the "points of agreement" from that discussion in a letter dated November 9, 2004. In those points, plaintiff agreed to return the $3,000 to the Vernonia church through the district office, "as that money was intended for the subsidy of the church for your salary for the first three months of employment there and not to be taken over and above your salary." Furthermore, the letter indicated that, because plaintiff had not chosen to seek reappointment in a Foursquare Church, his license to be a Foursquare pastor would be suspended until he chose to request reinstatement.

In the meantime, Swor and Cooke drafted a letter that Swor read aloud to the Vernonia congregation. Swor and Cooke testified that they wanted to inform the congregation about the circumstances of plaintiff's departure because it "had a right to know what was happening" and because they wanted to avoid speculation and rumors regarding plaintiff and the April transaction. In that letter, Swor explained that, "[t]hrough communication between the district staff and the church council, and a review of the church books and council minutes, it is now evident that there has been, to some extent, a financial misappropriation by former pastor [plaintiff]." That letter also indicated that plaintiff had taken the position in Vernonia on the express condition that he would consider a long-term stay there, that he had told the district in November 2003 that he was not interested in remaining at the church for longer than six months to a year, that he requested the district not look for another pastor until he was ready to leave, and that they [866] respected plaintiff's wishes to not tell the congregation or council that plaintiff

was anticipating leaving the Vernonia church. Finally, the letter indicated that, after discussing the matter with the district, plaintiff had agreed to return the $3,000 in question to the church. It closed by saying, "Where it is not the intention of the district to harm anyone's personal reputation, it is sometimes important to bring difficult issues to the light, so that nothing will hinder the future work of the church."

Plaintiff was unaware of the letter until shortly after Swor read it to the Vernonia congregation, when two congregants confronted him on separate occasions. The first occurred while he visited the home of a Vernonia congregant and that congregant accused him of stealing funds from the church. In the second, a member of the Columbia City congregation approached him in a grocery store and asked him whether it was true that he had stolen funds from the church. Those interactions alarmed plaintiff; he was convinced that he had done nothing wrong and had expected that the issue would be resolved privately between him and the district. He elected not to pay back the $3,000 as he had previously agreed, because he believed that, by doing so, he would be admitting that he was guilty of misconduct. He also contacted Swor, individuals at the Vernonia church, and the International Foursquare organization requesting a copy of the letter that Swor had read to the congregation; they all refused his request. In the course of denying one of those requests, Cooke wrote in an e-mail to Swor's secretary, who had forwarded the request to Cooke, that plaintiff may have "want[ed] to stir up trouble. He has already demonstrated a willingness to lie and steal, and to purposely [sow] discord against the division."

Subsequently, plaintiff requested a meeting to have neutral leadership from the church hear both sides of the misappropriation issue. That meeting occurred in May 2005 and included a couple pastors whom plaintiff claimed "were friends with [Cooke] and [Swor]." Plaintiff subsequently received a letter from Swor indicating that the group had concluded that plaintiff had misappropriated $3,000 above and beyond the $3,300 that the district had promised to him, but that, given his testimony that he had spent $1,500 on health insurance premiums, they were asking him to return only $1,500 of the funds "to bring [his] financial relationship with the church back to good standing."[1] At no point did Swor or anyone else indicate that they would take steps to restore his reputation with the Vernonia or other Foursquare congregations.

Since that time, plaintiff, who is in his fifties, has been unable to find steady work as a pastor in any church, either within or outside of the Foursquare organization. Due to his loss of income, he sold his house and moved into a fifth-wheel trailer with his wife.

Plaintiff ultimately filed a complaint against Cooke, Swor, and the church (hereinafter collectively referred to as defendants) for, among other things, defamation based on the letter read to the congregation stating that plaintiff had misappropriated funds

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[1] The $1,500 in health insurance premiums reflected in the letter is less than the $1,844.16 that plaintiff testified that he had paid for health insurance. It appears that plaintiff told the church representatives that he had written two $750 checks for health insurance premiums but had actually written four checks totaling $1,844.16 for that purpose: two $761.04 checks and two $161.04 checks.

and the e-mail in which Cooke described plaintiff's willingness to lie and steal.

Before trial, defendants moved for summary judgment, arguing, *inter alia*, that the allegedly defamatory statements were protected by a "First Amendment privilege." That motion was denied by letter opinion, which stated in part:

> "As to the claim that the First Amendment bars this action, I believe that the governing case law, including its application in Oregon, leads to the conclusion that plaintiff is not barred from seeking to protect his reputation on these facts. The issue here is not about doctrine or ecclesiastical processes. The First Amendment case law would be relevant if the action were for wrongful termination and the issue was whether the church organization had the power and right to end the pastor-[867]ate of [plaintiff]. However, this case is not about the power or right to terminate, it is about statements and actions in the process of termination, including the secular process of handling money and communications regarding alleged mishandling of money."

At the close of the evidence, defendants moved for a directed verdict, renewing their argument that the claim was barred by the First Amendment and asserting, alternatively, that they were entitled to a directed verdict on the ground that the statements were qualifiedly privileged and plaintiff had failed to present sufficient evidence for a jury to find that the privilege had been abused.[2] The trial court denied

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[2] The cases use the terms "qualified privilege" and "conditional privilege" interchangeably; we refer to it as a "qualified" privilege in this opinion.

the motion. The case then went to the jury, which was instructed on the law of qualified privilege.[3] The jury returned a verdict awarding damages to plaintiff, finding that defendants had defamed plaintiff and that they had abused the qualified privilege.

After a judgment was entered for plaintiff, defendants moved for judgment notwithstanding the verdict, ORCP 63, arguing that the First Amendment operated to deprive the court of jurisdiction over the defamation claim. After a hearing, the trial court concluded that "this case is absorbed in this relationship between the Foursquare Gospel Church and * * * [p]laintiff as an employment relationship, and I think that's what the current cases speak to." The trial court granted defendants' motion and entered a judgment to that effect. Plaintiff appeals that judgment.

To establish a claim for defamation, a plaintiff must show that the defendant made a defamatory statement about the plaintiff to a third person. *Wallulis v. Dymowski*, 323 Or. 337, 342-43, 918 P.2d 755 (1996). A defamatory statement is a false statement that would subject the plaintiff "to hatred, contempt or ridicule * * * [or] tend to diminish the esteem, respect, goodwill or confidence in which [the plaintiff] is held or to excite adverse, derogatory or

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[3] That instruction read, in part, as follows:

> "If you find that the plaintiff has proved by a preponderance of the evidence that defendants [ ] abuse[d the] privilege because defendants did not have objectively reasonable grounds for making their defamatory statements[,] did not believe those statements to be true[,] or made them for a purpose unrelated to the defendants' stated purpose, then the defendants are not entitled to the qualified privilege defense."

unpleasant feelings or opinions against [the plaintiff]." *Farnsworth v. Hyde*, 266 Or. 236, 238, 512 P.2d 1003 (1973) (internal quotation marks omitted; ellipses and first bracketed material in original, others added).

Oregon law recognizes the defenses of absolute privilege and qualified privilege to claims for defamation. An absolute privilege is a bar to the claim, *see Moore v. West Lawn Mem'l Park*, 266 Or. 244, 249, 512 P.2d 1344 (1973) ("When defamatory matter is absolutely privileged no cause of action exists * * *."); however, the Supreme Court has determined that an absolute privilege applies in only a narrow range of circumstances, *DeLong v. Yu Enterprises, Inc.*, 334 Or. 166, 171, 47 P.3d 8 (2002). As the court explained in *Wallulis*, the absolute privilege applies when "the public's interest in the unhampered operation of the government, when exercising such functions, outweighs an individual's interest in the preservation of reputation." 323 Or. at 349, 918 P.2d 755. Thus, for example, statements made as part of judicial and quasi-judicial proceedings are absolutely privileged. *See, e.g., Binder v. Oregon Bank*, 284 Or. 89, 91, 585 P.2d 655 (1978).

A qualified privilege, by contrast, generally "exists to protect three kinds of statements: (1) those made to protect the defendant's interests; (2) those made to protect the employer's interests; or (3) those made on a subject of mutual concern to the defendant and the persons to whom the statement was made." *DeLong*, 334 Or. at 170, 47 P.3d 8 (citing *Wallulis*, 323 Or. at 350, 918 P.2d 755). A qualified privilege is not an absolute bar to a defamation claim but, rather, requires the plaintiff to prove [868] that the defendant abused the privilege. *Wallulis*, 323 Or. at 348, 918

P.2d 755. Abuse occurs and the privilege is lost "if the publisher disbelieves or lacks reasonable grounds to believe that the defamatory statement is true, if the statement is made for purposes outside the scope of the privilege, if the statement is made to someone who is not reasonably believed to be necessary to accomplish the purpose of the privilege, or if the statement includes defamatory matter that is not reasonably believed to be necessary to accomplish the purpose of the privilege." *Lewis v. Carson Oil Company*, 204 Or.App. 99, 104, 127 P.3d 1207, *rev. den.*, 341 Or. 245, 142 P.3d 73 (2006) (citing *Benassi v. Georgia-Pacific*, 62 Or.App. 698, 703, 662 P.2d 760, *adh'd to as modified on recons.*, 63 Or.App. 672, 667 P.2d 532, *rev. den.*, 295 Or. 730, 670 P.2d 1035 (1983)).

"'[T]he question of whether or not a defamatory statement is privileged, either absolutely or conditionally, depends upon the balance that the court strikes between competing interests.'" *Wallulis*, 323 Or. at 348, 918 P.2d 755 (quoting *Lee v. Paulsen*, 273 Or. 103, 105, 539 P.2d 1079 (1975)). In *DeLong,* for example, the court examined that balance and concluded that a qualified, rather than absolute, privilege was appropriate to protect informal statements made to police officers in reporting a crime. 334 Or. at 174, 47 P.3d 8. The court noted that, unlike in judicial proceedings where "'[i]t is essential to the ends of justice that all persons participating in judicial proceedings (to take a typical class for illustration) should enjoy freedom of speech in the discharge of their public duties or in pursuing their rights, without fear of consequences[,]'" *Id.* at 173, 47 P.3d 8 (quoting Van Vechten Veeder, *Absolute Immunity in Defamation*, 9 Colum. L. Rev. 463, 469 (1909)), citizen reports to police officers "should

receive protection only if they were made in good faith, to discourage an abuse of the privilege." *Id.*

In this case, the First Amendment provides an additional analytical overlay, because the defamation claim involves statements made about a church pastor by church officials. Defendants argue that the trial court correctly granted their JNOV motion because the Free Exercise Clause prohibits the court from adjudicating plaintiff's defamation claim-in their words, that the court lacks subject matter jurisdiction over the claim. Given the above framework, we understand defendants to be arguing that the First Amendment thus operates to create an absolute privilege to plaintiff's claim of defamation.[4] Defendants do not argue that the JNOV was proper because the evidence is insufficient to support the jury's determination that defendants abused the qualified privilege. Thus, the issue presented is a question of law, which we review for errors of law. "It must be borne in mind at the outset that it is for the court, and not the jury, to decide where the line is to

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[4] Indeed, defendants framed this as a "First Amendment privilege" defense in their trial memorandum, summary judgment motion, and motion for directed verdict. Unlike a situation where the Free Exercise Clause provides immunity from suit, *cf. Mitchell v. Forsyth*, 472 U.S. 511, 525-26, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985) (immunity from suit under Free Exercise Clause entitles party to not stand trial or face litigation; that immunity is effectively lost if a case erroneously goes to trial), civil courts have jurisdiction to adjudicate torts involving religious organizations, *see Presbyterian Church v. Hull Church*, 393 U.S. 440, 449, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969) ("[N]ot every civil court decision * * * jeopardizes values protected by the First Amendment."). The issue, thus, is not whether civil courts confronted with such torts have jurisdiction, but rather, more accurately stated, whether the First Amendment bars the relief sought by plaintiff.

be drawn between a protected and an unprotected defamatory publication." *Post v. Oregonian Publishing Co.*, 268 Or. 214, 222, 519 P.2d 1258 (1974).

We turn to that issue. The First Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment, states, in part, that, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof * * *."[5] The United [869] States Supreme Court, in a line of cases beginning with *Watson v. Jones*, 80 U.S. (13 Wall) 679, 20 L.Ed. 666 (1871), has interpreted the Free Exercise Clause to severely restrict the authority of civil courts to adjudicate disputes "on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law." *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976). Courts have understood that statement to include church decisions involving the employment of ministers; the District of Columbia Court of Appeals, for example, described it as follows:

> "[C]ourts have consistently held that the Free Exercise Clause of the First Amendment prohibits judicial encroachment into church decisions where those decisions turn on church policy or on religious doctrine or practice. Except for contractual disputes, this prohibition includes church decisions concerning the employment of

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[5] The parties did not raise any issues under relevant provisions of the Oregon Constitution. Hence, we limit our analysis to the Free Exercise Clause of the First Amendment to the United States Constitution. *See State v. Mendez*, 308 Or. 9, 19, 774 P.2d 1082 (1989) (limiting discussion to the defendant's federal constitutional claim where he "failed to brief or argue any independent state constitutional theory").

> ministers because selection and termination of clergy is a core matter of ecclesiastical self-governance not subject to interference by a state."

Heard v. Johnson, 810 A.2d 871, 882 (D.C.2002) (citations omitted).

However, the First Amendment does not completely bar relief sought by a plaintiff against a church in a civil action. *See, e.g., Jones v. Wolf*, 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979) (applying "neutral principles" of law to resolve church property dispute where there was no need to examine church doctrine); *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969) ("[N]ot every civil court decision * * * jeopardizes values protected by the First Amendment."); *Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 357 (D.C.2005) (applying "neutral principles" approach to parties' contract dispute). Nor does it bar every employment-related suit involving a religious organization. *See, e.g., Minker v. Baltimore Annual Conf.*, 894 F.2d 1354, 1359-60 (D.C.Cir.1990) (allowing claim arising from oral contract between church and pastor if claim was provable without inquiring into church doctrine); *EEOC v. Pacific Press Pub. Ass'n*, 676 F.2d 1272, 1279 (9th Cir.1982) (First Amendment does not bar Civil Rights Act from being applied to editorial secretary in church publishing house); *Marshall v. Munro*, 845 P.2d 424, 428 (Alaska 1993) (defamation claim by pastor against another church official allowed where the allegedly defamatory statements did not require court to examine qualifications required of pastors).

No United States Supreme Court case-or Oregon appellate case-specifically addresses the applicability

of First Amendment protections to churches and other religious groups defending against allegations of defamation by a church pastor. In the few Oregon cases that have involved disputes over allegedly defamatory statements involving churches and other religious organizations, the appellate courts did not reach the question of First Amendment protection. *See Murphy v. Harty*, 238 Or. 228, 239-40, 393 P.2d 206 (1964) (defendant church did not file timely demurrer in defamation action by former minister); *Muresan v. Philadelphia Romanian Pentecostal Church*, 154 Or.App. 465, 474, 962 P.2d 711, *rev. den.*, 327 Or. 621, 971 P.2d 413 (1998) (defendant church failed to preserve its contention that allegedly defamatory statements were subject to an absolute constitutional privilege).

However, in *Christofferson v. Church of Scientology*, 57 Or.App. 203, 644 P.2d 577, *rev. den.*, 293 Or. 456, 650 P.2d 928 (1982), *cert. den.*, 459 U.S. 1206, 1227, 103 S.Ct. 1196, 1234, 75 L.Ed.2d 439, 468 (1983), we considered whether the First Amendment offered protections to a religious organization defending against a claim of fraud by a former member of the church.[6] Citing *Wiscon-*[870]*sin v. Yoder*, 406 U.S. 205, 215-16, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972), we explained that "[t]he

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[6] In *Christofferson*, the plaintiff had become a member of the Church of Scientology and paid for and participated in various courses and activities promoted by the church. 57 Or.App. at 207-08, 644 P.2d 577. The plaintiff later renounced her association with the church and sued both the local chapter and its governing organization for fraud, among other things, alleging that the church induced her to engage in the activities by making misrepresentations regarding the quality, benefits, and other characteristics of the activities in which she had engaged. *Id.* at 227-28, 644 P.2d 577.

fundamental qualification for protection based on the Free Exercise Clause of the First Amendment is that that which is sought to be protected must be 'religious.'" *Christofferson*, 57 Or.App. at 239, 644 P.2d 577. We also observed that

> "[a] defense based on the Free Exercise Clause presents particular difficulties in an action for fraud. To establish fraud, a plaintiff must ordinarily prove that the representations made were false. * * * However, when religious beliefs and doctrines are involved, the truth or falsity of such religious beliefs or doctrines may not be submitted for determination by a jury." *Id.* at 235-36, 644 P.2d 577 (citing *United States v. Ballard*, 322 U.S. 78, 64 S.Ct. 882, 88 L.Ed. 1148 (1944); *Meader v. Francis Ford, Inc.*, 286 Or. 451, 595 P.2d 480 (1979)).

In *Christofferson,* the defendants requested that the trial court determine which of the alleged misrepresentations were religious and withdraw from the jury the issue whether those statements were true or false. *Id.* at 237, 644 P.2d 577. The trial court instead submitted that decision to the jury-that is, whether the allegedly fraudulent statements were religious-along with instructions that it was not to decide the truth or falsity of any statements that it found to be religious. *Id.* On appeal, the defendants argued that the trial court must "determine in the first instance the religious character of statements alleged to be fraudulent and that, if it is determined that the statements relate to religious beliefs or practices, further inquiry is forbidden." *Id.*

Following the approach taken by the court in *Founding Church of Scientology v. United States*, 409 F.2d 1146 (D.C.Cir.1969), we concluded that the trial

court was required to determine the religious character of the alleged misrepresentations only if it could do so as a matter of law-that is, only if the sole conclusion that could be drawn from the evidence was that the alleged misrepresentations were purely religious. *Christofferson*, 57 Or.App. at 238, 644 P.2d 577.

Determining whether a representation is purely religious as a matter of law, we held, involves three inquiries: First, is the defendant organization of a religious nature? *Id.* at 239-41, 644 P.2d 577. Second, do the statements themselves relate to the religious beliefs and practices of the organization? As we explained,

> "[i]t is clear that a religious organization, merely because it is such, is not shielded by the First Amendment from all liability for fraud. * * * If the statements involved here do not concern the religious beliefs and practices of the [religious organization], the Free Exercise Clause provides no defense to plaintiff's action."

Id. at 241, 644 P.2d 577 (citation omitted). Finally, even if the statements are made on behalf of a religious organization and have a religious character, are they nonetheless made for a "wholly secular" purpose? *Id.* at 242, 644 P.2d 577. On that point, we explained that some ideas-such as "the nature of a supreme being" and "the value of prayer and worship"-"must always and in every context be considered religious as a matter of law," but that others are "religious only because those espousing them make them for a religious purpose." *Id.* at 243-44,

644 P.2d 577.[7] *See also Checkley v. Boyd*, 170 Or.App. 721, 731, 14 P.3d 81 (2000), *rev. den.*, 332 Or. 239, 28 P.3d 1174 (2001) (applying *Christofferson* analysis and holding that the defendants' free exercise defense did not provide a basis for dismissal of the plaintiff's intentional infliction of emotional distress claim because some of the plaintiff's allegations-such as allegations that the defendants had accused the plaintiff of physically abusing, stealing from, and neglecting his brother-would not "always and in every context" be considered religious in nature).

[871] We see no reason why that test should not guide our analysis in this case as well-that is, in the context of a free exercise defense to a claim for defamation made by a pastor against his church. An action for defamation-like fraud-generally requires the plaintiff to prove that the representations made were false. We recognized in *Christofferson* that a defense based on the Free Exercise Clause presents "particular difficulties" in that situation because the provision prohibits a jury from inquiring into the truth or falsity of religious beliefs or doctrines. 57 Or.App. at 235-36, 644 P.2d 577. However, *Christofferson* demonstrates that the task is not impossible-rather, it provides an appropriate framework for

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[7] In *Christofferson*, we concluded that the latter inquiry presented a jury question-that is, there was evidence from which a jury could conclude that the representations were made for a wholly secular purpose-and, therefore, the trial court did not err in refusing to withdraw the statements from the jury. 57 Or.App. at 244, 644 P.2d 577. Although we held in the plaintiff's favor on that issue, we ultimately reversed and remanded for a new trial based on erroneous jury instructions related to the defendants' Free Exercise Clause defense. *Id.* at 248, 644 P.2d 577.

ensuring that the jury will not be required to pass on the veracity of a defendant's religious beliefs in violation of the Free Exercise Clause, even when falsity is an element of the claim in question.

Defendants insist, however, that the "religious character" test of *Christofferson* is inapplicable, pointing out that its holding "that only 'purely religious' statements are protected by the First Amendment was *not* applied to defamatory statements about pastors in the context of an internal church dispute about their conduct as pastors." (Emphasis in original.) They argue that, because the plaintiff in *Christofferson* was a former church member, not a pastor, and her claims involved fraud and intentional infliction of emotional distress, rather than defamation, "[t]he issue of the Court becoming entangled in who 'speaks for the church' in the role of a pastor was not addressed."[8] (Emphasis in original.) In defendants' view, therefore, it is appropriate for us to consider cases from other jurisdictions that have considered the issue.

In particular, defendants urge us to follow the approach adopted by the District of Columbia Court of Appeals in *Heard.* In *Heard,* a pastor sued his employer church for wrongful eviction when the church became dissatisfied with his performance and voted to remove him. 810 A.2d at 875. While that case was pending, the pastor remained in his position in the church, and members of the church wrote a manual documenting the reasons for the pastor's

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[8] In any event, defendants argue that the statements at issue in the present case "were not wholly secular because they were made solely to other Church members and concerned plaintiff's conduct while serving as a pastor."

dismissal in accordance with its governance procedures. *Id.* The pastor then filed a complaint against the members for defamation based on the alleged publication of that manual. *Id.* at 875-76.

To resolve the question whether the defendants were entitled to the protection of the Free Exercise Clause in defending against that action, the court established the following rule:

> "[C]onstitutional protections afforded by the Free Exercise clause (prohibiting civil court interference in disputes between ministers and churches) extend to defamation claims, when: (1) such a claim flows entirely from an employment dispute between a church and its pastor so that consideration of the claim in isolation from the church's decision as to the pastor is not practical, (2) the alleged 'publication' is confined within the church, and (3) there are no unusual or egregious circumstances."

Id. at 885.[9]

We are not persuaded that that is the correct rule. The court in *Heard* correctly recognized that, although church decisions concerning the employment and termination of ministers implicate a "core matter of ecclesiastical self-governance," the church's autonomy in those matters is not absolute. *Id.* at 882. Instead, the court held, "weighing the free exercise protections against important state interests requires a 'delicate balancing.'" *Id.* at 883 (quoting *McDaniel v. Paty*, 435 U.S. 618, 628 n. 8, 98 S.Ct.

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[9] Applying that test, the court then determined that the plaintiff's claim could not be practically isolated from the employment dispute, and, hence, concluded that the First Amendment barred plaintiff's claim. *Heard*, 810 A.2d at 885.

1322, 55 L.Ed.2d 593 (1978)). In the case of a defamation claim arising out of a church's employment relationship with its pastor, the court concluded that that balance tips in favor of First Amendment protection for the [872] church against such a claim to protect the church's ability to choose its leaders. *Id.* at 884-85. That is so, the court held, "because resolution of the claim would require an impermissible inquiry into the church's bases for its action." *Id.* at 883. In other words, in that situation, even though the alleged defamatory statements may not overtly express religious principles or beliefs, it would be impractical to consider the statements separately from the church's decision as to the pastor. *Id.*

However, the *Heard* court did not go so far as to hold that the First Amendment foreclosed civil courts from ever granting relief on a defamation claim arising between pastors and their churches-in other words, the court recognized that the First Amendment privilege is not absolute. First, the court appears to have limited its holding to defamation claims flowing "entirely from an employment dispute." *Id.* at 885. Moreover, it explicitly recognized that, even in a defamation claim arising out of an employment dispute, "unusual or egregious circumstances" might take the claim out of the realm of First Amendment protection. *Id.* The court noted, for example, that "a potentially defamatory charge of child molestation might be actionable under the *Sherbert* exception[,]" *id.*, referring to *Sherbert v. Verner*, 374 U.S. 398, 403, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963) (recognizing the state's ability to restrict religious activity when the activity "pose[s] some substantial threat to public safety, peace or order").

That example only illustrates the difficulties inherent in applying the *Heard* test. Harkening back to the underpinnings of the Free Exercise Clause, we fail to understand how a defamatory statement accusing a pastor of theft is any more (or less) a matter of church "discipline, faith, internal organization, or ecclesiastical rule, custom, or law[,]" *Serbian*, 426 U.S. at 713, 96 S.Ct. 2372, than is a defamatory statement accusing a pastor of child molestation.

As in *Christofferson*, the court in *Heard* struggled to strike a balance between the constitutional protection against civil courts adjudicating disputes involving religious beliefs and practices, while at the same time holding religious groups accountable for tortious behavior based on nonreligious conduct. We conclude that *Christofferson* offers the more tenable approach for achieving the appropriate balance between those competing interests. *See Wallulis*, 323 Or. at 348, 918 P.2d 755 ("[T]he question of whether or not a defamatory statement is privileged, either absolutely or conditionally, depends upon the balance that the court strikes between competing interests." (quoting *Lee*, 273 Or. at 105, 539 P.2d 1079)).

Applying the principles of *Christofferson* to a defendant's assertion of a free exercise defense to a defamation claim by a pastor against his or her church is relatively straightforward: If the organization is of a religious character, and the alleged defamatory statements relate to the organization's religious beliefs and practices and are of a kind that can only be classified as religious, then the statements are purely religious as a matter of law, and the Free Exercise Clause bars the plaintiff's claim. In defamation law terms, those statements enjoy an absolute privilege.

If, however, the statements-although made by a religious organization-do not concern the religious beliefs and practices of the religious organization, or are made for a nonreligious purpose-that is, if they would not "always and in every context" be considered religious in nature-then the First Amendment does not necessarily prevent adjudication of the defamation claim, but the statements may nonetheless be qualifiedly privileged under established Oregon law.[10]

[873] In this case, the alleged defamatory statements-that the pastor had misappropriated money and had demonstrated a willingness to lie-would not "always and in every context" be religious in nature. Thus, even though the statements related to plaintiff's conduct as a pastor of the church, that fact does not render those statements absolutely privileged as a matter of law under the Free Exercise Clause. Rather, that fact gives rise to a qualified privilege. As discussed above, a qualified privilege to make a statement arises when the statement is made

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[10] We note that the Alaska Supreme Court has taken a similar approach. In *Marshall*, the plaintiff, a Presbyterian minister, brought defamation claims against another minister based on allegations that that minister had made false statements to the plaintiff's prospective new church that the plaintiff was dishonest and unable to perform his pastoral duties due to throat surgery, and that he had made an improper advance to a member of his previous congregation. 845 P.2d at 425. The court held that, because resolution of the claims did not require a determination of the plaintiff's qualifications to be a minister or what those qualifications might be, the court was not divested of jurisdiction of the claim by the First Amendment; rather, the court concluded, the allegedly defamatory statements were subject to a qualified privilege. *Id.* at 428-29 (citing *Murphy*, 238 Or. at 244, 393 P.2d 206).

to protect the interests of the plaintiff's employer or it is on a subject of mutual concern to the defendant and the persons to whom the statement is made. *Benassi*, 62 Or.App. at 702, 662 P.2d 760. As to the first category, the Supreme Court has explained that "employees and their private employers have a legitimate interest in free communications on work-related matters, especially when reporting actual or suspected wrongdoing." *Wallulis*, 323 Or. at 350, 918 P.2d 755. Moreover, in *Murphy,* the court recognized that communications between church officials on the subject of charges that led to the dismissal of a former missionary of the church-that is, communications "on a subject of common concern to both of them"-were subject to a qualified privilege. 238 Or. at 244, 393 P.2d 206.[11] The *Restatement (Second) of Torts* § 596, comment e (1977), supports that position:

> "The common interest of members of religious, fraternal, charitable or other non-profit associations, whether incorporated or unincorporated, is recognized as sufficient to support a privilege for communications among themselves concerning the qualifications of the officers and members and their participation in the activities of the society. * * * So too, the rule is applicable to communications between members and officers of the organization concerning the legitimate conduct of the activities for which it was organized."

The burden then falls on the plaintiff to prove that the qualified privilege was abused-that is, that the defendant did not believe the statement to be true or lacked reasonable grounds for believing that it was

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[11] The First Amendment defense was not at issue in that case.

true, or that the statement was made for a purpose outside the scope of the privilege. *Lewis*, 204 Or.App. at 104, 127 P.3d 1207 (citing *Benassi*, 62 Or.App. at 703, 662 P.2d 760); *see also Murphy*, 238 Or. at 244, 393 P.2d 206 ("Such a communication, if bona fide made, even though it contains criminating matter which otherwise would be actionable, is protected by the privilege, and where a prima facie case of privilege is established, as here, the burden devolves upon the plaintiff to produce evidence of actual or express malice * * *."). In our view, determining whether defendants had reasonable grounds for believing the defamatory statements or whether the statements were made for purposes outside the purpose of the privilege can be resolved without requiring the court to delve into the ecclesiastical concerns of the church.

In sum, we reject defendants' contention that the First Amendment provides an absolute bar to plaintiff's defamation claim in this case. Because that proposition was the sole basis for defendants' JNOV motion, and the trial court granted defendants' motion on that basis, it follows that the court erred.[12]

Reversed and remanded with instructions to reinstate the jury's verdict.

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[12] Although defendants also sought a directed verdict on the alternative ground that the statements were qualifiedly privileged and plaintiff had failed to present sufficient evidence for a jury to find that the privilege had been abused, they did not renew that argument in their JNOV motion, and they are not defending the JNOV on that basis on appeal. Thus, we need not explore whether there were factual issues for the jury on that defense.

APPENDIX C

IN THE CIRCUIT COURT OF THE
STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

No. 0509-10015

TIM TUBRA, an individual,
Plaintiff,

v.

JOHN MICHAEL COOKE, and RON SWOR, individuals; and THE INTERNATIONAL CHURCH OF THE FOURSQUARE GOSPEL, a California nonprofit corporation,
Defendants.

ORDER GRANTING DEFENDANTS' MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

Defendants' Motion for Judgment Notwithstanding the Verdict came regularly for hearing before the Court on November 7, 2006, The Honorable Pierre Van Rysselberghe presiding. Plaintiff was represented by his attorneys, Christopher Lundberg and Matthew Malmsheimer. Defendants were represented by their attorneys, Jeffrey Eden and John Kaempf. The Court considered the briefing and evidence submitted by the parties, and heard and considered oral argument by counsel for the parties.

Now, therefore, the Court being fully advised,

IT IS HEREBY ORDERED that, for the reasons stated by the Court on the record, defendants' Motion for Judgment Notwithstanding the Verdict is granted, and defendants are entitled to a Judgment in their favor on all of plaintiff's claims.

DATED: November 29, 2006.

By: /s/ Pierre Van Rysselberghe
THE HONORABLE PIERRE VAN RYSSELBERGHE
CIRCUIT COURT JUDGE

Submitted by:

/s/ John Kaempf
John Kaempf, OSB #92539
Attorneys for Defendants

APPENDIX D

IN THE CIRCUIT COURT OF THE
STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

No. 0509-10015

TIM TUBRA, an individual,
Plaintiff,

v.

JOHN MICHAEL COOKE, and RON SWOR, individuals; and THE INTERNATIONAL CHURCH OF THE FOURSQUARE GOSPEL, a California nonprofit corporation,
Defendants.

THIRD AMENDED COMPLAINT
(Defamation; Defamation by Implication)

JURY TRIAL REQUESTED
NOT SUBJECT TO MANDATORY ARBITRATION

Plaintiff Tim Tubra alleges the following:

INTRODUCTION

Plaintiff was a pastor with the Foursquare Church until defendants forced him to leave the ministry and publicly defamed him to parishioners by falsely accusing him of stealing church funds and a laptop computer. As a result of defendants' false accusa-

tions, plaintiff has suffered substantial and potentially irreparable damage to his personal and professional reputation, has been ostracized from a community that was the bedrock of his life for over two decades, has suffered extreme emotional distress that has resulted in sleepless nights and gastrointestinal upset, and has been stripped of the ability to pursue his spiritual calling and vocation.

PARTIES

1.

Plaintiff is an individual who resides in Columbia City, Columbia County, Oregon.

2.

Defendant John Michael Cooke is an individual who, upon information and belief, resides at 59982 Ridgeway Loop, St. Helens, Oregon, 97051.

3.

Defendant Ron Swor is an individual who, upon information and belief, resides at 1883 NE 19th Avenue, Canby, Oregon, 97013-2545.

4.

Defendant International Church of the Foursquare Gospel "(ICFG") is a California nonprofit corporation with its primary place of business at 1910 W. Sunset Blvd, #200, Los Angeles, California, 90026. Defendant ICFG is registered as a foreign nonprofit corporation and is licensed to do business throughout Oregon. Defendant ICFG has substantial contacts in Oregon, with numerous subsidiary districts and churches throughout the state.

5.

Defendant ICFG lists Mr. Steve Overman, 1410 W 13th Avenue, Eugene OR, 97402, as its registered agent in Oregon.

FACTS

6.

At all material and relevant times, defendant Cooke was the Senior Pastor at the Columbia City Foursquare Church and directly supervised and directed plaintiff's job duties.

7.

At all material and relevant times, defendant Swor was the regional superintendent for the Columbia District of the Foursquare Church and directly supervised and directed the job duties of both plaintiff and defendant Cooke.

8.

At all material and relevant times, plaintiff and defendants Cooke and Swor were agents of defendant ICFG, and defendant ICFG granted defendants Cooke and Swor authority to act on its behalf.

9.

At all material and relevant times, defendants Cooke and Swor acted under the actual or apparent authority of defendant ICFG. Their actions as alleged in paragraphs 10-12, 14, 15 and 20-25 were motivated, at least in part, by a desire to serve the interests of defendant ICFG.

10.

In or about November 2003, plaintiff was laid off from the Columbia City Foursquare Church after

pastoring there for approximately two years. In connection with that lay-off, defendant Cooke gave a laptop computer to the Vernonia Foursquare Church. The Vernonia church counsel subsequently authorized plaintiff to keep the laptop computer for his own use.

11.

After laying plaintiff off, defendant Cooke offered plaintiff a position as interim pastor at the Vernonia Foursquare Church. That position was to last for only 4-6 months. The previous pastor at the Vernonia Foursquare Church had split from ICFG to form his own church, and a substantial number of congregants had followed him. Plaintiff was reluctant to accept the position. Plaintiff relied on this representation that the pastoring position was interim only in agreeing to accept this position.

12.

As an additional inducement to accept the pastoring position at the Vernonia Foursquare Church, defendants Cooke and Swor offered plaintiff an additional $3,300 and health insurance coverage for 6 months. Shortly after plaintiff began that pastoring position, defendant Swor confirmed that the $3,300 and insurance were gifts that were not "expected to be repaid in any way."

13.

In reliance on defendants' representations, in or around November 2003, plaintiff accepted the position at the Vernonia Foursquare Church. The health insurance was particularly important to plaintiff, as his son would have been ineligible for his college soccer scholarship without coverage.

14.

In a letter introducing plaintiff to the congregation at the Vernonia Foursquare Church, defendant Cooke stated that plaintiff had been appointed as the permanent pastor of the Vernonia Foursquare Church. That representation of plaintiff as the permanent, rather than the interim pastor, upset and concerned plaintiff. However, plaintiff agreed with defendants Cooke and Swor to leave the communication as it was with the congregation.

15.

That pastoring position, which was originally supposed to last only 4-6 months, continued for nearly 10 months without any indication of efforts by defendants Cook or Swor to find a replacement or any communication to plaintiff regarding his status at the church. Plaintiff became increasingly concerned that defendants were doing nothing to move him from the interim position at the Vernonia Foursquare Church.

16.

Plaintiff was also very concerned about the status of the health insurance. It was defendant's [sic] intention to pay for plaintiff's health insurance beyond the initial six month period if the Vernonia church could not cover that expense. However, neither defendant Swor or Cooke discussed that issue with plaintiff as the end of the initial six month period approached.

17.

On or about April 3, 2004, plaintiff sought authorization from the Vernonia Church council to withdraw $3,000 of the gift from the district to plaintiff for his own use. After discussions, the Vernonia Church

Council authorized the dispersal of those funds. Under ICFG Bylaws, the treasurer of a church may only disburse church funds with the authorization of the church council.

18.

On or about April 7, 2004, Mr. Tubra placed $3,000 of the gift given to him by defendants Cooke and Swor into a personal retirement account. His intention was to use those funds to pay for his and his family's health insurance, and he in fact paid approximately $1,500 of those funds to the Columbia City Foursquare Church for that purpose.

19.

In or about June 2004, the Vernonia church council held a meeting at which plaintiff and defendants Cooke and Swor were present. At that meeting, plaintiff informed the council of the agreement between he and defendants Cooke and Swor that his position as pastor at the Vernonia church was originally only an interim appointment, but that he had instead been introduced to the congregation by defendant Cooke as the permanent senior pastor. Council members present were very concerned about the misrepresentation of plaintiff's status to the congregation and expressed their concern to defendants Cooke and Swor.

20.

On or about September 15, 2004, in a meeting with plaintiff, defendant Swor falsely accused him of misappropriating church assets. Shortly after that, on or about September 17, 2004, defendant Swor dismissed plaintiff from his position at the Vernonia Foursquare Church and suspended his pastor's license with the ICFG.

21.

On or about October 14, 2004, defendant Swor received a letter informing him that plaintiff had obtained the authorization of the Vernonia Church Council for the dispersal of the $3,000 gift. Notwithstanding that evidence, on or about October 27, defendant Cooke read to the Vernonia congregation a letter, written in conjunction with defendant Swor, in which he falsely accused plaintiff of misappropriating church assets. In that same letter, defendants also claimed that plaintiff had originally committed to considering serving as the Vernonia congregation's permanent pastor, had requested that defendant Swor refrain from seeking a permanent pastor during plaintiff's interim appointment, and that he had insisted on not correcting the congregation's misunderstanding regarding his interim status as pastor so "as not to disrupt the church and plant suspicion toward himself."

22.

On or about November 30, 2004, defendant Cooke wrote an e-mail to Teresa McGill, defendant Swor's secretary, in which he stated that Mr. Tubra had "demonstrated a willingness to lie and steal, and to purposely sew [sic] discord against the division."

23.

In or about September 2004, plaintiff applied for unemployment insurance benefits. In response to that claim, defendant Swor wrote a letter to plaintiff indicating that "[a]fter having drawn a full time salary . . . and considering the misappropriation of the $3,000 district subsidy, it really does seem unreasonable to expect this little church to pay you any more." The Vernonia church, at the direction of

defendant Cooke, denied plaintiff's unemployment insurance claim. Defendant Cooke falsely explained to the Employment Department that "[i]t was agreed that [plaintiff] would serve for a minimum of six months, after which time a permanent pastor would be sought. In mid-August, [plaintiff] was notified that a pastor was indeed found, and that his service to the church would conclude in September[.] This transition was not a termination, however, but only a following through on the agreed upon time schedule which was made at [plaintiff's] request."

24.

In a letter dated November 9, 2004, defendant Swor wrote recited [sic] the basis for his discharge of plaintiff. According to defendant Swor, plaintiff had "agreed to return $3,000 to the Vernonia Foursquare Church, by way of the district office, as that money was intended for the subsidy of the church for [plaintiff's] salary for the first three months of employment there and not to be taken over and above [plaintiff's] salary." Defendant Swor also stated that, "since you have chosen to move on and not seek reappointment in a Foursquare church, . . . your license will be suspended[.]"

25.

Plaintiff has attempted to mitigation his damages as the result of his termination.

FIRST CLAIM FOR RELIEF

(Defamation)
(Count One)

26.

Plaintiff realleges each and every one of the allegations set forth above, and additionally alleges the following facts.

27.

As set forth above in paragraph 21, defendant ICFG—by and through its agents, defendants Cooke and Swor—published, without privilege a defamatory allegation of misappropriation against plaintiff to third parties by falsely accusing plaintiff of "financial misappropriation." Defendant Cooke also falsely accused plaintiff of stealing a laptop computer.

28.

As set forth in paragraphs 12, 14, and 16-18, those defamatory allegations were false.

29.

That false and defamatory allegation has injured plaintiff's reputation by imputing to plaintiff the commission of a crime of moral turpitude and an unfitness and lack of integrity to perform his duties as a Foursquare pastor, and by prejudicing plaintiff in his pursuit of that chosen profession.

30.

As evidenced by paragraphs 11, 12, 14 and 16-18, defendants made their defamatory statements about plaintiff with knowledge of or reckless disregard for the falsity of those statements.

31.

Defendants' defamatory statements have caused plaintiff to suffer damages in the following respects:

a. By stripping him of his livelihood as a pastor in the Foursquare Church and his income from that position, including salary and benefits, in an amount to be proved at trial but currently estimated at $250,000;

[sic – b. omitted]

c. By denying him the ability and opportunity to pursue his spiritual calling and by calling his moral character into question before the Foursquare community in which Plaintiff had been deeply involved for over two decades;

d. By isolating him from the Foursquare community and by making him an object of suspicion in that community in which he had previously been held in high esteem and to which he had devoted his life and his labor; and

e. By causing Plaintiff extreme emotional distress that is evidenced by sleepless nights, gastro-intestinal upset, and frequent crying.

32.

As a direct and proximate result of defendants' defamation, Plaintiff has been damaged personally, professionally, socially, and spiritually in an amount to be specifically proved at trial but currently estimated at $475,000.

(Count Two)

33.

Plaintiff realleges each and every allegation alleged above, excluding paragraph 9. Plaintiff alleges the following additional fact in the alternative to the allegations alleged in paragraph 9.

34.

Defendants Cooke and Swor were acting in their individually capacity and outside the scope of the actual or apparent authority of their agency with ICFG. As such, defendants Cooke and Swor are individually liable for their defamatory statements against plaintiff.

35.

As a direct and proximate result of that conduct, plaintiff has sustained damages as set forth above.

SECOND CLAIM FOR RELIEF

(Defamation)
(Count One)

36.

Plaintiff realleges each and every one of the allegations set forth above, and additionally alleges the following facts.

37.

As set forth above in paragraph 22, defendant ICFG—by and through its agent, defendant Cooke—published, without privilege, a defamatory allegation of theft against plaintiff to a third party by accusing plaintiff of demonstrating "a willingness to . . . steal." Defendant also accused plaintiff of lying and "sowing discord against the division."

38.

As set forth in paragraphs 12, 14, and 16-18, those defamatory allegations were false.

39.

That false and defamatory allegation has injured plaintiff's reputation by imputing to plaintiff the commission of a crime of moral turpitude and an unfitness and lack of integrity to perform his duties as a Foursquare pastor, and by prejudicing plaintiff in his pursuit of that chosen profession.

40.

As evidenced by paragraphs 11, 21, 14 and 16-18, defendant [sic] made those defamatory statements

about plaintiff with knowledge of or reckless disregard for the falsity of those statements.

41.

Defendants' defamatory statements have caused plaintiff to suffer damages as set forth above in paragraph 31.

42.

As a direct and proximate result of defendants' defamation, Plaintiff has been damaged personally, professionally, socially, and spiritually in an amount to be specifically proved at trial but currently estimated at $475,000.

(Count Two)

43.

Plaintiff realleges each and every allegation alleged above, excluding paragraph 9. Plaintiff realleges the following additional fact in the alternative to the allegations contained in paragraphs [sic] 9.

44.

Defendant Cooke was acting in his individual capacity and outside the scope of the actual or apparent authority of his agency with ICFG. As such, defendant Cooke and [sic] is individually liable for his defamatory statements against plaintiff.

45.

As a direct and proximate result of that conduct, plaintiff has sustained damages as set forth above.

THIRD CLAIM FOR RELIEF

(Defamation by Implication)
(Count One)

46.

Plaintiff realleges each and every one of the allegations set forth above, and additionally alleges the following facts.

47.

As set forth above in paragraphs 14, 21 and 22, defendant ICFG—by and through its agents, defendants Cooke and Swor—published, without privilege, statements from which a reasonable person could draw defamatory inferences about plaintiff. By describing plaintiff as "the enemy," stating that plaintiff had been involved in a "financial misappropriation," and had, on his own and without pressure from defendants Cooke and Swor, directed the deception of the congregation regarding his interim status as pastor, defendant [sic] made statements from which a reasonable person could falsely infer that plaintiff was a liar, a thief, and an enemy of the church.

48.

As set forth in paragraphs 12, 14, and 16-18, such defamatory allegations were false.

49.

Those false and defamatory implications have injured plaintiff's reputation by imputing to plaintiff the commission of a crime of moral turpitude and an unfitness and lack of integrity to perform his duties as a Foursquare pastor, and by prejudicing plaintiff in his pursuit of that chosen profession.

50.

As evidenced by paragraphs 11, 12, 14, and 16-18, defendants made their defamatory statements about plaintiff with knowledge of or reckless disregard for the falsity of those statements.

51.

Defendants' defamatory statements have caused plaintiff to suffer damages in the following respects:

a. By stripping him of his livelihood as a pastor in the Foursquare Church and his income from that position, including salary and benefits, in an amount to be proved at trial but currently estimated at $250,000;

[sic – b. omitted]

c. By denying him the ability and opportunity to pursue his spiritual calling and by calling his moral character into question before the Foursquare community in which Plaintiff had been deeply involved for over two decades;

d. By isolating him from the Foursquare community and by making him an object of suspicion in that community in which he had previously been held in high esteem and to which he had devoted his life and his labor; and

e. By causing Plaintiff extreme emotional distress that is evidenced by sleepless nights, gastro-intestinal upset, and frequent crying.

52.

As a direct and proximate result of defendants' defamation, Plaintiff has been damaged personally, professionally, socially, and spiritually in an amount to be specifically proved at trial but currently estimated at $475,000.

(Count Two)

53.

Plaintiff realleges each and every allegation alleged above, excluding paragraphs [sic] 9. Plaintiff alleges the following additional fact in the alternative to the allegations contained in paragraphs [sic] 9.

54.

Defendants Cooke and Swor were acting in their individual capacity and outside the scope of the actual or apparent authority of their agency with ICFG. As such, defendants Cooke and Swor are individually liable for their defamatory statements against plaintiff.

55.

As a direct and proximate result of that conduct, plaintiff has sustained damages as set forth above.

WHEREFORE, plaintiff prays for the following relief:

1. On his First Claim for Relief, for judgment against defendants in an amount to be specifically proved at trial but currently estimated at $475,000;

2. On his First Claim for Relief, for an injunction ordering the defendants to publish in every local newspaper in Columbia County and read to all of the Foursquare Churches in the Columbia District a letter stating that any statements suggesting that plaintiff misappropriated or otherwise mishandled church assets were false and that plaintiff is innocent of any wrongdoing because the money and property at issue were given by the church to plaintiff as a gift;

3. On his Second Claim for Relief, for judgment against defendants in an amount to be specifically proved at trial but currently estimated at $475,000;

4. On his Third Claim for Relief, for judgment against defendants in an amount to be specifically proved at trial but currently estimated at $475,000;

5. On his Fourth Claim for Relief, for judgment against defendants in an amount to be specifically proved at trial but currently estimated at $475,000;

6. On his Fifth Claim for Relief, for judgment against defendants in an amount to be specifically proved at trial but currently estimated at $475,000;

7. For prejudgment interest, costs and disbursements; and

8. For any other relief that the court deems just, equitable, or appropriate.

DATED this 11th day of September, 2006.

HAGLUND KELLEY HORNGREN
JONES & WILDER LLP

By: /s/

Matthew E. Malmsheimer, OSB No. 03384
Christopher Lundberg, OSB No. 94108
Attorneys for Plaintiff

APPENDIX E

IN THE CIRCUIT COURT OF THE
STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

No. 0509-10015

TIM TUBRA, an individual,
Plaintiff,

v.

JOHN MICHAEL COOKE, and RON SWOR, individuals; and THE INTERNATIONAL CHURCH OF THE FOURSQUARE GOSPEL, a California nonprofit corporation,
Defendants.

VERDICT

We, the jury, being first duly empanelled and sworn, find as follows:

1. Did defendants subject plaintiff to defamation?

ANSWER: _X_ yes

___ no

If you answered "no" to question 1, your verdict is for defendants and your presiding juror should sign this Verdict form, otherwise proceed to question 2.

2. Did defendants abuse the privilege?

ANSWER: _X_ yes

____ no

If you answered "no" to question 2, your verdict is for defendants and your presiding juror should sign this Verdict form. If you answered "yes" to question 2, at least the same 9 of you who agreed on the answer to question 1 must also agree on the answer to question 2.

Proceed to question 3.

3. What are plaintiff's damages?

ANSWER: $ 200,000 economic damages

$ 155,000 noneconomic damages

At least the same 9 of you who agreed on the answer to questions 1 and 2 must agree on the answer to question 3.

Your Presiding Juror should sign this Verdict form.

By: /s/ _____
Presiding Juror

APPENDIX F

October 14, 2004

Greetings in the powerful and unchanging name of Jesus Christ!

It is with great thankfulness that we celebrate as a district the new season that you are enjoying as a church in Vernonia. We have every confidence in the Lord that He will continue to join you together in a spirit of unity with your new pastors, and continue to bless you as you partner together for the sake of the gospel.

In a desire to allow the church to move ahead without hindrance from the past, it necessary [sic] for me to address couple [sic] of issues properly for the sake of the record, and to clear up any misunderstandings. Through communication between the district staff and the church council, and a review of the church books and council minutes, it is now evident that there has been, to some extent, a financial misappropriation by former pastor Tim Tubra.

For the purpose of setting forth a truthful record, and in a spirit of full and honest disclosure, we felt it needful for the church membership to be aware of our findings, so that the enemy would not be able to use anything against the church in the future.

1. That Tim Tubra agreed, in October of 2003, to accept an appointment to the Vernonia Foursquare Church, and to make a serious effort to build up the church while considering whether or not he would sense a long-term call to pastor there.

2. That the district committed to paying for full medical and dental insurance for the pastor for the first six months, November through April, in order

not to place an undue burden on the church. This amount totaled $4,566.

3. That, since the church was only able to afford $1,500 per month for the pastor's salary at the point of transition. [sic] To allow Tim to invest full-time service to the church, the district committed to subsidizing an additional $1,100 per month for the first three months to make up the difference of the previous pastor's salary, which was $2,600 per month, [sic]

4. That according to church records, on April 7, 2004, Tim withdrew $3,000 of the $3,300 district subsidy and placed it in his personal retirement account, over and above having drawn $2,600 for each month of his appointment, instead of using that money to reimburse the church, as was instructed in writing by the district.

It has also come to our attention, through discussion with several church members, that there is some misinformation concerning the appointment of Tim Tubra. Because it is important for the district to maintain a healthy relationship of trust with the local church, I need to also make offer [sic] the following facts clear for the record:

1. That Tim Tubra accepting the appointment to serve the church in Vernonia, on the expressed condition that he was still considering the call to that church, and was not simply treating it as an "interim" for his own sake. [sic] In keeping with that agreement, a standard letter of instruction was sent with Tim in an unsealed envelope, in lieu of a personal installment by the supervisor.

2. That Tim called the district office at the end of November 2003, to inform me that he was no longer

interested in considering the permanent assignment in Vernonia, as he had previously committed, but requested permission to stay for six months to a year, until such time as he could find an assignment elsewhere.

3. That Tim requested that the district not proceed to look for another pastor for Vernonia during this interim period, as it might force him to leave before he was ready. With a desire to be gracious and yet guard the church's interest at the same time, I agreed to wait until after Easter to ask the superintendent to pursue other pastoral candidates.

4. That, although it was the initial intention of the superintendent and myself to notify the church counsel of the change in his employment status, Tim insisted that the communication be left as it was as not to disrupt the church and plant suspicion toward himself. Believing he had the best interest of the church in mind, I consented. It is important to state that this concession was at the strong request of Tim, and not once has he requested to tell the church otherwise, nor has the district or its personnel ever instructed Tim not to disclose his intentions. Rather, that we deferred these matters to Tim's discretion as the pastor of the church. [sic]

It is important for you to know, after discussing the financial misappropriation issue with Tim, he has agreed to return the $3,000 to church [sic], which we believe to be an important step towards resolving the matter. Our hope and prayer is that the Lord would continue to provide the Vernonia Church provision and blessing, as it pursues the vision for reaching the community for Jesus.

Where it is not the intention of the district to harm anyone's personal reputation, it is sometimes important to bring difficult issues to the light, so that nothing will hinder the future work of the church. It is our hope that the Lord would bear witness to our testimony, and that the open and gracious disclosure of the truth would allow the church to move on in a spirit of unity and trust.

In the Grace of God,

Pastor Ron Swor
Columbia District Supervisor
International Church of the Foursquare Gospel

APPENDIX G

From: Mike Cooke [jmcooke1@yahoo.com]
Sent: Tuesday, November 30, 2004 7:23 PM
To: Teresa McGill
Subject: Re: Vernonia

Teresa,

Ron [Swor] can call me if he wants. There are not two letters sent, unless he is talking about the letter of introduction. You have both on file. I would not give them to him, but it is up to you. Nothing has been said that is not public record. Tim [Tubra] may just be wanting to stir up trouble. He has already demonstrated a willingness to lie and steal, and to purposely sew [sic] discord against the division. My feeling would be hesitant to give him any ammunition.

The instruction I gave to Sandy Hart, the administrator, was to keep the letter on file, and to show it to any member who wanted to read it, but not to disseminate copies, for that very reason. This was per Ron's instruction. If you decide otherwise, please let me know.

Mike

Teresa McGill <tmcgill@canbyfoursquare.com> wrote:

Mike,

Tim Tubra called me today and asked for copies of 2 more letters, the first one sent to the congregation and the last one sent. Ron [Swor] was wondering what your thoughts were? Do you know the purpose of this request?

Thanks

Teresa